

(2005) 06 JH CK 0055
In the Jharkhand High Court
Case No : LPA No. 554 of 2004

Bhola Prasad Singh and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-06-2005

Acts Referred:

Citation : (2005) 3 JCR 184

Hon'ble Judges : Altamas Kabir, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : P.P.N. Roy and S.K. Sharma, for the Appellant; P. Modi, GP I and Sarvendra Kumar, JC to GP I, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal, at the instance of Bhola Prasad Singh and three others, is directed against the judgment and order dated 22nd June, 2004 passed by the learned Single Judge in a writ application filed by the appellants and one Kashi Prasad, being W.P. (S) No. 837 of 2002.

2. It appears from the materials on record and the judgment under appeal that the appellants along with Kashi Prasad and 15 others filed a writ petition, being CWJC No. 13043 of 1993 before the Patna High Court, claiming regularization of their services in the Health Department of Government of Bihar. The said writ petition being dismissed, all the 20 writ petitioners filed a SLP before the Hon'ble Supreme Court, which was ultimately numbered as Civil Appeal No. 8336 of 1997. As was noticed by the Hon'ble Supreme Court, those twenty appellants were appointed on 1st of January, 1980 by the Civil Surgeon, Dumka in Class III and Class IV posts as daily wagers. On 30th March, 1989 their appointments were regularised on the recommendation of the Appointment Committee. Subsequently, on 25.8.1993 the District Level Establishment Committee directed the appellants to show-cause as to why their appointments should not be cancelled, since their initial appointments were irregular and ultimately on 14th October, 1993, services of the said appellants were terminated.

3. Having regard to the fact that the said appellants before the Hon''ble Supreme Court had been working for a long period and had satisfactorily served the Department, even without getting any salary and were not guilty of fraud and sharp practice and they were also not lacking in requisite qualifications and they had been appointed against sanctioned posts, the Hon''ble Supreme Court took a sympathetic view of the matter and considering the special facts of the appeal, directed that 50 per cent of the sanctioned posts which were held by the appellants should be filled up from amongst the appellants on the basis of their inter se merit position by taking into account their academic qualifications, by waiving question of age bar, if any, and usual procedures for such appointment, and the remaining 50 per cent of the said sanctioned posts, were to be filled up on regular basis by throwing it open to the members of the public, following the procedure prescribed for such appointment in the State of Bihar. The remaining appellants, who could not be absorbed against 50 per cent of the said sanctioned posts, would be entitled to compete for appointment in the balance 50 per cent posts along with other eligible candidates. In their cases, age bar was to be relaxed and they were also to be given a credit of 25 per cent marks for the experience which they had gained for services rendered by them for the said long period of 5 years or more. Subsequent to the said direction of the Hon''ble Supreme Court, all the twenty persons, including the present appellants, were re-appointed in the same scale in which they were when they had been removed from their services. Suddenly, however, after a period of about 11 months of their re-appointment, the Chief Medical Officer- cum-Civil Surgeon issued an order dated 3rd April, 1999, communicating the order of the Deputy Director, Health Medical Education and Family Welfare and also the order of the Commissioner-cum-Secretary dated 26th March, 1999, canceling the order of re-appointment of the appellants, on the ground that the re-appointments were not in accordance with the direction of the Hon''ble Supreme Court. The Chief Medical Officer-cum-Civil Surgeon directed all the twenty candidates, including the present appellants, to appear before him on 8th April, 1999 with their educational qualification certificates, age certificates and mark sheets. Thereafter, since the matter was being delayed, two sets of Contempt petitions were filed which were ultimately disposed of by the Hon''ble Supreme Court; one on the assurance given by the authorities that the services of the 12 candidates would be confirmed within 12 weeks and the other, with leave to the remaining eight candidates to challenge the selection before the High Court.

4. The present appellants thereafter filed the writ application, questioning the manner in which the order of the Hon''ble Supreme Court had been interpreted to their disadvantage. The learned Single Judge upon hearing the parties and considering the direction given by the Hon''ble Supreme Court agreed with the interpretation of the Commissioner-cum-Secretary that all the twenty persons had been reappointed on a misinterpretation of the order of the Hon''ble Supreme Court by the Civil Surgeon-cum-Chief Medical Officer, Dumka and accordingly dismissed the writ application filed by the appellants herein.

5. Aggrieved thereby, the present appeal has been filed. Mr. Roy, appearing in support of the appellants, tried to convince us that the concerned authorities of the Health Department had acted erroneously in taking upon themselves the burden of interpreting the order of the Hon''ble Supreme Court. According to Mr. Roy, the appointments made initially of all the twenty candidates was on a correct appreciation of the direction given by the Hon''ble Supreme Court and if the authorities were of the view that an incorrect interpretation had been made, it was their duty to approach the Supreme Court for clarification and not to set-aside the appointments already made. Mr. Roy also urged that since the appellants had worked for a considerable period of time, they were in any event entitled to have their services regularised, having regard to the several decisions of the Hon''ble Supreme Court cited by him.

6. Mr. Modi, on the other hand, contended that the authorities were always at liberty to correct any mistake which they might have committed in performance of their administrative functions and there was no reason for the appellants to question the same, since they had themselves participated in the selection process for direct recruitment in respect of 50% of the sanctioned posts referred to in the order of the Hon''ble Supreme Court. Mr. Modi also submitted, on the basis of an affidavit filed on behalf of the respondents, that out of the eight candidates, representing 50 per cent on the sanctioned posts, indicated by the Hon''ble Supreme Court, no one had been appointed along with the 12 other candidates.

7. Having considered the submissions made on behalf of the respective parties, we are unable to convince ourselves that the order of the learned Single Judge requires any interference. However, it is not for us to express any view with regard to the manner in which the order of the Hon''ble Supreme Court has been interpreted by the Commissioner-cum-Secretary and it will always be open to the appellants to move the Hon''ble Supreme Court, if so advised, for such clarification as they may consider necessary in the circumstances.

8. This appeal is dismissed. There will be no order as to costs.